IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

MFA.No. 1007 of 2001(A)

OPMV.1741/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI
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APPELLANTS: RESPONDENTS 1 & 2
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1. **A.T.POTHAPPAN, S/O. A.M.THOMAS,**
   ARATTUMKULAM VEEDU, MARARIKULAM
   VADAK AMSOM, CHERTHALA,
   ALAPPUZHA DISTRICT (DRIVER).

2. **THE GENERAL MANAGER,**
   SAJI FLIGHT SERVICES (P) LTD.,
   AIRPORT, TRIVANDRUM (OWNER).

BY ADV. SRI.P.GOPALAKRISHNAN NAIR
SRI.P.A.AHAMMED

RESPONDENTS: PETITIONERS 1 TO 7 & RESPONDENTS 3 & 4.
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1. **POTTAMMAL AMINAUMMA, W/O. VEERAMUNNI,**
   PANAYAMPARAMBA HOUSE,
   THURAKKAL P.O.,
   (WIFE OF THE DECEASED).

2. **SIDDIQUE, S/O. VEERAMUNNI,**
   PANAYAMPARAMBA HOUSE, THURAKKAL P.O.,
   (SON OF THE DECEASED).

3. **MOIDEENKUTTY, S/O. VEERAMUNNI,**
   PANAYAMPARAMBA HOUSE, THURAKKAL P.O.,
   (SON OF THE DECEASED)

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**4. FATHIMA, D/O. VEERAMUNNI,
PANAYAMPARAMBA HOUSE,
THURAKKAL P.O.,
(DAUGHTER OF THE DECEASED).**

**5. KHADEEJA, D/O. VEERAMUNNI,
PANAYAMPARAMBA HOUSE, THURAKKAL P.O.,
KONDOTTY (DAUGHTER OF THE DECEASED).**

**6. NAFEESA, D/O. VEERAMUNNI,
PANAYAMPARAMBA HOUSE , THURAKKAL P.O.,
(DAUGHTER OF THE DECEASED)**

**7. JANSEENA, D/O. VEERAMUNNI,
PANAYAMPARAMBA HOUSE, THURAKKAL P.O.,
(DAUGHTER OF THE DECEASED).**

**8. M.NAJMAL, S/O. UMMER,
ROSHNI, PALLIKKAL, (DRIVER AND OWNER)**

**9. NATIONAL INSURANCE COMPANY LIMITED,
MANJERI.**

**BY ADV. SRI.K.M.SATHYANATHA MENON
SRI.SAJU.S.A**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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M.F.A. NO.1007/2001

ORDER ON CMP. NO.7453/2001 IN MFA. 1007/2001

DISMISSED

06.09.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.HEMA, JUDGE

/TRUE COPY/

P.A. TO JUDGE

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J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1007 OF 2001

Dated 6th September, 2007

JUDGMENT

Koshy,J.

One Veeramunni sustained fatal injuries in an accident on 18.2.1994 at about 7.15 a.m. Subsequently he died due to the injuries. His wife, two sons and three daughters filed an application for compensation. While Veeramunni was travelling in a Jeep bearing registration No.KRM 1359 owned and driven by the third respondent and insured by the fourth respondent, another jeep bearing registration No.KRK 3009 driven by the first respondent (first appellant) and owned by the second respondent (second appellant) came with overspeed in a rash and negligent manner and dashed against the same. According to the claimants, both drivers were negligent. They claimed a compensation of Rs.2,00,000/=. Total compensation awarded by the Tribunal was only Rs.62,000/-. The owner and driver (appellants herein) of the Jeep bearing registration No.KRK 3009 were asked to pay the award amount as it was found by the Tribunal that the accident occurred due to the negligence of the first respondent driver of the Jeep which hit the Jeep in which Veeramunni was travelling and the second respondent who was the owner of the vehicle was found vicariously liable as there was no insurance coverage to the vehicle at the time of accident. No

insurance policy was produced by the appellants regarding their jeep. Even in the appeal it is not stated that there was insurance coverage for the vehicle.

2. According to RW1, the driver of the Jeep (first respondent), while he was driving the Jeep, the tyre got punctured. He had stopped the vehicle in the right side of the road and when he was replacing the wheel, the jeep bearing registration No.KRM 1359 came from the opposite side driven in a rash and negligent manner dashed against his jeep. In cross examination RW1 admitted that he was on the wrong side. Even if his case is admitted, while driving the vehicle if tyre got punctured, if he was running in his correct side, it should have stopped in the left side. But, according to RW1, space was only in the right side and he has to replace the right tyre also. Ext.A4 charge sheet was issued against RW1 only. Police did not charge sheet the other driver. First respondent or none of the person filed any complaint before the police stating that the other driver was negligent. It is submitted that in another case filed by an injured who was travelling in the same jeep along with Veeramunni, the award was set aside and the matter was remanded. We have gone through the remand order passed by a learned single Judge of this court in M.F.A.No.1041 of 2001. In the award impugned in that case,

negligence was not discussed and it was also not stated how the amount was arrived at. In this case, the matter was discussed in detail at paragraph 7 of the award and how the amount was arrived at was also discussed. It is submitted that in the criminal case the first first appellant was acquitted. Judgment in the criminal case was not produced before the Tribunal. However, we have perused the criminal court judgment also. That was dismissed only because the witnesses examined in that case were declared hostile and deposed that they have no idea about the reason for the accident and they have not seen the accident. That is not a reason for exonerating the appellants from liability in the Motor Accidents Claims Tribunal's case. The evidence required in the criminal case and Motor Accidents Claims Tribunal's case are different. Purpose to be achieved is also different. On the basis of the evidence adduced in this case, we agree with the Tribunal regarding finding of negligence.

3. Now the question to be considered is whether finding of negligence by the Tribunal solely on the first appellant is correct or not. No independent evidence was produced. PW1 did not see the accident and he has only hearsay information. RW1 came to the box and deposed that he was changing the tyre. When right side tyre was punctured, he moved the jeep to the right side as there was sufficient

road margin on that side. Third respondent was driving the jeep in a rash and negligent manner. There is no counter evidence. Scene mahazar was not produced by the claimants to show that RW1 was negligent. Apart from the copy of the charge sheet and FIR, there is no evidence for attributing sole negligence on RW1. Third respondent, owner-cum-driver of the other jeep or fourth respondent, its insurance company, did not adduce any evidence to rebut the evidence adduced by RW1 that accident occurred due to the negligence of the third respondent. The police charge sheeted RW1 because passengers in the other jeep were injured. According to the charge sheet there was head-on-collision. RW1 was Acquitted. According to the claimants in the claim petition, both drivers were negligent. It was a head-on-collision. Hence, we are of the opinion that negligence has to be apportioned equally with the drivers. It was a straight road. If either of the drivers were vigilant, accident could have been averted. Apex Court in **Bijoy Kumar Dugar** v. **Bidyadhar Dutta & Ors.** (AIR 2006 SC 1255) held that in head on collision, in the absence of clear evidence, negligence can be apportioned equally on both drivers. Taking all these circumstances, we are of the opinion that liability to pay compensation also should be equally attributed on both drivers. The jeep driven by the third respondent was validly insured by the fourth respondent insurance

company. Coverage of insurance was admitted in the written statement. Hence, R1 and R2 are liable to deposit 50% of the decreed amount by the Tribunal jointly and severally and R4 insurance company (9th respondent in the appeal) shall deposit the balance 50% on behalf of R3 (R8 in appeal). The award is modified accordingly.

The appeal is disposed of as above.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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